

Letter of Findings Number: 42-20110155
International Fuel Tax Agreement (IFTA)
Tax Year: 2009

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ISSUE

I. International Fuel Tax Agreement – Assessment.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14(a); IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-4(a); IFTA Articles of Agreement, § R530 (2010); IFTA Articles of Agreement, § R1210.300 (2010); IFTA Procedures Manual, § P540 (2011); IFTA Procedures Manual, § P550 (2011).

Taxpayer protests the assessment of additional tax.

STATEMENT OF FACTS

Taxpayer was an Indiana resident in 2009, but is now a resident of California. Taxpayer is an owner/operator. Taxpayer was assessed additional motor carrier fuel tax as a result of an International Fuel Tax Agreement ("IFTA") audit of the 2009 tax year. The audit determined that the Taxpayer did not maintain documentation sufficient to arrive at a conclusive determination of their fuel tax liability. Taxpayer responded to the audit results, and submitted documentation to the Department. A supplemental audit was conducted, and the assessments were readjusted. However, Taxpayer protests the remaining assessments of fuel tax based on the lack of documentation.

I. International Fuel Tax Agreement – Assessment.

DISCUSSION

The Department conducted an audit and determined that Taxpayer owed additional IFTA fuel taxes for that year. The Department concluded that Taxpayer did not provide any records. Due to the lack of documentation, the Department assessed tax based upon the best information available. Taxpayer protests the Department's assessment of motor carrier fuel taxes pursuant to IFTA.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. The agreement's goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel. Therefore, the Taxpayer was subject to motor carrier fuel IFTA taxes. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). The taxpayer bears the burden of proving that any assessment is incorrect. *Id.* The taxpayer has a duty to maintain books and records and present those to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

IFTA Articles of Agreement, § R1210.300 (2010) provides the standard for determining whether a proposed assessment may successfully be challenged by the licensee. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive." *Id.*

Taxpayer, as an IFTA licensee, is subject to the rules of IFTA. According to the IFTA Procedures Manual, § P540 (2011) states that:

.100 Licensees shall maintain detailed distance records which show operations on an individual-vehicle basis. The operational records shall contain, but not be limited to:

.005 Taxable and non-taxable usage of fuel;

.010 Distance traveled for taxable and non-taxable use; and

.015 Distance recaps for each vehicle for each jurisdiction in which the vehicle operated.

.200 An acceptable distance accounting system is necessary to substantiate the information reported on the tax return filed quarterly or annually. **A licensee's system at a minimum, must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries.** Supporting information should include:

.005 Date of trip (starting and ending);

.010 Trip origin and destination;

.015 Route of travel (may be waived by base jurisdiction);

.020 Beginning and ending odometer or hubodometer reading of the trip (may be waived by base

- jurisdiction);
- .025 Total trip miles/kilometers;
- .030 Miles/kilometers by jurisdiction;
- .035 Unit number or vehicle identification number;
- .040 Vehicle fleet number;
- .045 Registrant's name; and
- .050 may include additional information at the discretion of the base jurisdiction. (**Emphasis added**).

According to the IFTA Procedures Manual, § P550 (2011) states that:

- .100 The licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business.
- .200 Separate totals must be compiled for each motor fuel type.
- .300 Retail fuel purchases and bulk fuel purchases are to be accounted for separately.
- .400 The fuel records shall contain, but not be limited to:
 - .005 The date of each receipt of fuel;
 - .010 The name and address of the person from whom purchased or received;
 - .015 The number of gallons or liters received;
 - .020 The type of fuel; and
 - .025 The vehicle or equipment into which the fuel was placed.

Taxpayer was not able to provide any records or any other documentation during the initial audit. Therefore, the recordkeeping was determined to be inadequate. After receiving the audit results, Taxpayer provided fuel receipts and trip reports to the Department. However, the records were still determined to be inadequate, because Taxpayer was not able to provide individual vehicle mileage or fuel summaries.

Taxpayer owes additional IFTA fuel taxes in all four quarters of 2009, but focuses his protest on the first quarter of 2009. Taxpayer claims that in the first quarter of 2009, Taxpayer was leased onto another carrier ("Carrier"), and that it was under Carrier's IFTA and International Registration Plan ("IRP") authority that Taxpayer was operating. According to Taxpayer, Carrier was paying the IFTA taxes, and was then taking the money out of Taxpayer's paycheck. It was not until the second quarter of 2009 that Taxpayer obtained his own IFTA account.

Taxpayer claimed to have IFTA returns from this other carrier that it could provide. Taxpayer was asked to provide these returns and a lease agreement with Carrier. Taxpayer was also asked to provide cab cards, log books, and trip reports to help establish that Carrier filed the IFTA returns and paid the IFTA fuel taxes.

Taxpayer provided a one page lease agreement with Carrier. The standards for how to interpret a lease agreement in terms of who is responsible for submitting IFTA returns and paying IFTA taxes are found in IFTA Articles of Agreement, § R530 (2010), which provides that:

- .100 Short-Term Leases. In the case of a carrier using independent contractors under short-term/trip leases of 29 days or less, the trip lessor will report and pay all fuel taxes.
- .200 Long-Term Leases. In the case of a carrier using independent contractors under long-term leases (30 days or more), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. In the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee will be responsible for reporting and paying fuel use tax. If the lessee (carrier) through a written agreement or contract assumes responsibility for reporting and paying fuel use taxes, the base jurisdiction for purposes of this Agreement shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor.

The lease that Taxpayer submitted is a long-term lease, because the terms state that it was to take effect on February 28, 2009, and expire on August 31, 2009. In spite of the spelling and grammatical errors found therein, it is apparent that Taxpayer was required to pay and report the IFTA fuel taxes. However, as IFTA Articles of Agreement, § R530, makes clear regarding long-term leases, even "[i]n the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee will be responsible for reporting and paying fuel use tax."

Taxpayer also provided a cab card, purportedly showing his vehicle was using Carrier's IRP license plates. However, the owner's name on the cab card is another person entirely. The other information is similarly unhelpful.

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete source documentation, the Department's original audit is reasonable and supported by law and IFTA Audit Manual procedures. Taxpayer has not "established by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, § R1210.300 (2010).

FINDING

Taxpayer's protest is respectfully denied.

